

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO  
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April 12, 2007

Honorable Council President Scott H. Peters  
202 C Street, MS 10A  
San Diego, California 92101

Dear Council President Peters:

I am in receipt of your letter to David Wescoe, dated April 11, 2007, in which you purport to assure Mr. Wescoe that no representative of SDCERS or Cheiron, the SDCERS actuary, will be subject to questioning by the City Attorney or any Deputy City Attorney at the April 16, 2007 City Council meeting. Neither you nor any member of the City Council has the authority to prohibit the City Attorney from discharging his duties as chief legal advisor of the City under Charter Section 40. Asking questions of individuals engaged in City business before the City Council clearly falls within the scope of those duties.

While I appreciate Mr. Wescoe's concerns regarding ongoing litigation, this excuses neither his appearance nor the appearance of the SDCERS actuary before the Council. Moreover, it is highly inappropriate for Mr. Wescoe to attempt to set conditions upon the appearance of any employee or agent of SDCERS at a meeting of the City Council for any reason. Further, the Council President has no legal authority to accept such a condition and, in so doing, waive the right of the City Council to receive, and the citizens of San Diego to hear, the legal advice and counsel of the City Attorney. Should Mr. Wescoe or any other representative of SDCERS or Cheiron find it necessary, they are welcome to appear before the Council with legal representation and seek advice in the event that they are asked a question that could have a deleterious effect on the legal position of SDCERS vis a vis the City.

In no event is the ongoing litigation between SDCERS and the City a shield behind which SDCERS can hide to avoid appearing before the Council or answering questions from the City Attorney. Please inform Mr. Wescoe that his appearance before the Council shall be unconditional. I look forward to a productive meeting on April 16.

Sincerely,



MICHAEL J. AGUIRRE, City Attorney

MJA:jdf

cc: Honorable Mayor and City Councilmembers  
Jay Goldstone, CFO  
Andrea Tevlin, IBA  
David Wescoe